

## **Notary Work Group**

### **Meeting Minutes**

*Tuesday, May 8, 2018*

#### **Members in Attendance:**

Assistant Secretary of State, Kathy Smith; Secretary Michael Leahy, Department of Information Technology; Marilyn Bentley (by phone), Baltimore City Clerk of the Court; Toby Musser, Penny Reed (by phone), Denise Pope, Shelly Gross-Wade (by phone), Ken Krach, Janelle Straszheim, Lydia Williams, M. Clare Schuller, Jean Quattlebaum, Nick D'Ambrosia, Michael Kasnic, Alex Montanio (by phone), Ricky Adams, Frieda McWilliams, Rod Ritter, Kathie Connelly, Michael Chodos, Rick Triola (by phone), David Shean (by phone), Josaphine Yuzuik, Marquita Lewis, Michael Schlein, Lance Schine

#### **Members of the Public in Attendance:**

Mindy Lehman, Maryland Bankers Association; Michol Bobb;

#### **Welcome**

Assistant Secretary of State, Kathy Smith, called the meeting to order at 1:05PM. She welcomed everyone to the first meeting of the 2018 Notary Work Group.

#### **Introductions**

Everyone in attendance was invited to introduce themselves.

#### **Background, Purpose, and Goals**

Assistant Secretary Smith summarized the: Purpose: The purpose of the Notary Work Group is to study, review and make recommendations about the entire body of law, including Remote Notarizations, physical presence, fees, enforcement, and more in the State of Maryland. Goals: To determine if the notary law needs to be revised, to align the notary law with related laws in the State of Maryland, and to propose recommendations regarding the body of notary laws and remote notarizations that currently exist in other states.

She provided a brief overview of the distinction between electronic notarizations and remote notarizations. She explained that e-notarizations are legal in Maryland. Ms. Smith provided a brief overview of the status of Remote notarization around the country. Remote Notarizations are now legal in Montana and Virginia. Remote Notarizations are intrastate only in Montana. The State of Montana proceeded with Remote Notarizations, at least in part, because the expanse of the state often makes it difficult for individuals who know each other to appear in-person to conduct business, e.g. farmers purchasing million-dollar farm equipment from dealers to whom they are known and with whom they've conducted business for years, etc. Montana also wanted to protect their notaries from having to travel to another state to defend a notarial act.

Last year, remote notarization law was passed in Texas and Nevada. Ohio repealed their remote notarization law and is currently in the process of replacing it.

Assistant Secretary Smith explained the enforcement actions that the Secretary of State is capable of; receiving a complaint and deciding whether or not to revoke a notary's commission.

Assistant Secretary Smith advised that the outcome of the work group is not pre-determined. The purpose is to move forward with recommendations are made by the work group. This work group consists of members from a broad range of constituencies impacted by notarial acts. She explained that it's important to take a very comprehensive review of Maryland's current notary law and other Maryland laws, which may reference notaries, she cited electronic notarizations as an example not contained in Maryland Notary law, it's found in Commercial Regulations. She suggested that discussions should include the integration of notary references in all Maryland law, examine fees and enforcement, using the example of a Montgomery County notary that was charging \$95 per notarization. She advised that the Office of the Secretary of State submitted a regulatory change to modernize reimbursement of mileage by indexing mileage reimbursement rates to the IRS Federal mileage standard. The current allowable mileage reimbursement rate is \$0.31 per mile.

Assistant Secretary Smith invited questions and suggestions.

*Penny Reed:* Mentioned that Louisiana has commissioned an e-notary work group and recommended not doing e-notary for all, but in limited use only. The Louisiana group determined that edits do need to be made to their notary law. They did not consider other Louisiana laws that referenced notaries, not included in the notary law. They needed to revisit the process to ensure a consistency.

*Janelle Straszheim:* Asked what integrating notary law entails. Assistant Secretary Smith explained that we should consider not just notary law, but all items found elsewhere in the law that is impacted by notaries.

*Michael Chodos:* Explained that the uniform electronic transactions act passed allows e-notarizations and that there are about 10 references to notaries in current state law.

### **Review of Objectives of the Work Group**

*Assistant Secretary Smith:* Reviewed the objectives of the notary work group found on the materials distributed to Work Group members before the first meeting. She asked if anything was missing from the objectives. There was no response. She asked for any comments.

*Janelle Straszheim:* Stated that it “looks thorough.”

*Assistant Secretary Smith:* Asked if there is anything in the law that Work Group members want to address

*Michael Chodos:* Asked if there is any interest in considering RULONA (Revised Uniform Law on Notarial Acts)?

*Assistant Secretary Smith advised that* the Secretary of State has discussed RULONA but believes RULONA is a large body of work that requires extensive discussion. The allocated time for the Work Group is limited, as it’s scheduled to end in December. To that end, it seems the discussion should focus on the purpose, goals, and objectives of the Work Group. A discussion of RULONA is welcomed at a later date. She stated that approximately 40% of the states have adopted RULONA.

*M. Clare Schuller:* The work group should address record keeping of a notary and the possible burdens record keeping could impose.

*Michael Schlein:* Gave examples of issues the Secretary of State encounters with notaries and the law. They include: notarizing when the notary has a personal interest in the transaction, clarity is needed in the law about what a notary register should include, what it means to satisfactorily identify a signer, better enforcement capabilities, and notary fees. He also explained the cost to society when notarizations are done improperly or poor records are kept. Poor quality notarizations can cost people lots of money to fix the problem created.

*Lydia Williams:* She has an interest in elder abuse and ensuring that matter is addressed.

*Toby Musser:* Asked if there are any pending notary laws. Michael Schlein answered “no” that there are none at this time.

*Rod Ritter:* Identity theft is a huge problem. He said that they recently sold a car to someone with a fake ID. Identity theft is a real problem and it needs to be addressed.

*Nick D’Ambrosia:* Money laundering relating to art objects and real estate are major problems. The federal government declared certain areas in the country are more susceptible to money laundering via real estate transactions.

*Michael Chodos:* As much as 5% of real estate transactions are affected by fraud, per Title companies. Notary tools are less sophisticated than those the scammers use. Knowledge based identification and biometrics are needed. Experts in identification say that you need multiple layers of identifying a person.

*Toby Musser:* There is a liability issue with holding personal identifying information. If a notary is holding this information then it needs to be protected.

*Frieda McWilliams:* Laws contradict each other when it comes to record keeping between keeping identification for mortgages versus land transactions.

*David Shean:* The privacy matter is critical. We need to determine what information must be maintained and how to protect it.

### **Discussed Creating Subgroups**

*Assistant Secretary Smith:* Asked about suggestions for subgroup topics. The following topics were suggested by the members of the work group: privacy, record keeping, liability, necessary tools, verification of identity, equitable access, fees, protecting the small notary, consolidation of notary laws, education, naming issues/single notary identifier, capacity, testing, remote notarization, mobile notaries, and enforcement.

*Secretary Leahy:* There is an educational issue; not related to someone's primary job but if being a notary is their stand-alone business.

*Michael Chodos:* Testing requirements or education and the specific question of journaling of journaling need more guidance. Guidance on how to keep it, what must be kept, and how to keep it secure.

*Frieda McWilliams:* A signer's capacity and how to deal with it is an issue.

*Nick D'Ambrosia:* Remote notarizations need specific mechanisms for what is acceptable.

*Denise Pope:* Asked which documents are ones that banks do not want notarized?

*Ricky Adams:* Education, not just for the notary, but to the public is necessary.

*Shelly Gross-Wade:* The state should have a register of all notaries with a single notary identification number for all notaries so that when you de-certify a notary, you are de-certifying the notary's identification number. Assistant Secretary Smith advised that the Office of the Secretary of State has requested a similar system, but there are numerous technological challenges with an antiquated system.

*Kathie Connelly:* Asked if we make complaints against notaries available to the public. Assistant Secretary explained legal restraints prevent publicizing complaints.

*David Shean:* Naming issues for married names should be addressed.

*Kathie Connelly:* Asked how name changes work at this time.

*Michael Schlein:* Explained the process to submit name changes.

*Janelle Straszheim:* We need to change the language to make it gender neutral; the current wording only addresses name changes for women getting married.

*Toby Musser:* Asked how many notaries and renewals we get per year.

*Assistant Secretary Smith:* informed the members that Maryland has approximately 80,000 notaries and that there appears to be an uptick in applications. Approximately 24,000 applications were processed in 2017; time will tell if this is a trend.

*Michael Chodos:* Some people work part-time as notaries to make extra money and some people act as notaries as a full-time job. Notary work load ranges everywhere in between.

*Frieda McWilliams:* Laws must be made to agree with each other.

*Assistant Secretary Smith:* Agreed and stated that the subgroups must consider other laws in Maryland related to the issues they are discussing.

*Assistant Secretary Smith:* Suggested that updates to the Secretary of State's enforcement ability and record keeping requirements need to be bolstered but they may impact a privacy issue.

*Ken Krach:* We should explore the scope of authority of a notary.

*Assistant Secretary Smith:* Explained that different states allow notaries to perform different functions; e.g. in Maine, a notary can perform a marriage. Different requirements in each state can cause jurisdictional issues; begging the question whether a notary knows the notary law in other states for which they may be performing a notarial act.

*Frieda McWilliams:* Asked if signature guarantees of a bank officer are still required.

*Multiple people* answered "yes".

*Toby Musser:* Asked if delaying or holding an action on a notarized document in order to verify the identification of a notary would hurt bank process.

*Michael Chodos:* Explained that in some states, a notary can be found online to verify notary status. Technology allows for protection of a notary's seal to prevent fraud; multi-factor authentication is required in certain states; remote notary requires video. If either party committed fraud they would be on video. He stated that a 1-day delay on notarizations would hurt business because of rate locks and deadlines to close.

*Clare Schuller:* Stated there are exceptions to rate locks/deadlines; sellers can sell in advance of closing and money can be held by title companies.

*David Shean:* Echoed Michael Chodos, that turnaround in real-time is needed because to delay it can jam a settlement, especially with a same day closing.

*Rick Triola:* Stated that in California, the Office of the Secretary of State has a CSV file that anyone can access. All sides: title, settlement, lender can select a closing agent from a known/approved list. On identifying an individual, California has a specific list of documents allowed for use of identification. There are 7-8 items required for a form of identification to be valid.

*Josaphine Yuzuik:* Asked about the cost of notarization vs. remote notarization cost.

*Michael Chodos:* Stated that the cost per notarization varies by state, in some states a notarization is as low as \$0.50 to as high as \$15.00 in California. Remote notary fees are higher than a standard notary fee. In Virginia, a notary can charge up to \$25 per remote notarization. He explained that mortgage based transactions are different, people pay a per mortgage transaction fee.

*Josaphine Yuzuik:* Expressed concern about the cost for people who cannot pay a remote notary fee.

*Rick Triola:* Stated that there are two types of notaries: 1<sup>st</sup>, the UPS/FedEx notary who charge the regular notary fee for basic transactions; and 2<sup>nd</sup>, the notary who specializes in a transaction such as a notary real estate that charges differently. He stated that in California, a notary can charge \$75 to travel to a settlement office and that a reverse mortgage travel fee in California can be as high as \$250.

*Assistant Secretary Smith:* Asked Lydia Williams about the impact of a higher fee for reverse mortgages on vulnerable adults.

## **Public Forum**

Guest Michol Bobb: Explained that Title Insurance Producers license is needed for real estate transactions but there are notaries without the license doing closings and that it can cause a real issue.

Guest Michol Bobb: Shared that Mobile notaries perform notarial functions that certain employers will not let their notaries perform. She stated that banks do not let certain documents be notarized by their employees.

Guest Michol Bobb: Stated that banks do not let their notaries notarize quit claim deeds for out of state properties and school documents, amongst others.

Guest Mindy Lehman: Expressed concern that a greater investment in the Secretary of State to better regulate the sector may be needed. Assistant Secretary Smith acknowledged substantial resources are necessary to modernize and build the infrastructure. She advised that two Notary Officers process and serve 80,000 Notaries.

Guest Michol Bobb: Stated that a 3rd party usually pays the fee for mortgages, not paid directly by the customer. It was mentioned that not all county recorders in all counties accept electronic recordings. In a county that does not accept electronic recording, the county recorder only accepts a tangible copy.

### **Subgroups**

Following a robust discussion about the topics to be considered by subgroups, the Work Group members identified the following subgroups:

1. Liability including: Record Keeping/Privacy/Liability of the Notary
2. Identity Management including: Fees/Expenses/Necessary Tools/Education and Testing Requirements
3. Enforcement including: (including remote mechanisms) /Registration/Name Changes
4. Remote Notarizations including: Cost of Technology/Financial Transactions

Staffing Subgroups: After a discussion, Assistant Secretary Smith advised that Michael Schlein will e-mail the work group the list of subgroups to confirm the subgroups were accurately captured and that members should reply stating their preference(s) to participate in one or more subgroup.

### **Next Steps**

Assistant Secretary Smith proposed the next following steps and welcomed input:

1. Next meeting date is the 2<sup>nd</sup> Tuesday of June (June 12, 2018)
2. Topic suggestions for the next meeting needed. Ken Krach suggested circulating RULONA. Assistant Secretary Smith advised that the Uniformed Law Commission (ULC) is in the process of editing RULONA and that she will e-mail RULONA to the Work Group.
3. Michael Schlein will e-mail the group for subgroup preferences.
4. Members were asked to respond with their subgroup assignment preference.
5. Subgroups should meet before the June 14<sup>th</sup> meeting and be prepared to report progress.

Assistant Secretary Smith asked for other comments or suggestions. None were offered.

Assistant Secretary Smith thanked the Work Group members, shared the importance of their work and her appreciation of their commitment of time and talent. She asked the Work Group members to be prepared to report on the status of their subgroups at the June 14<sup>th</sup> meeting. The meeting was adjourned at 3:00 PM.